

226343

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35314

MASSACHUSETTS COASTAL RAILROAD LLC-ACQUISITION-
CSX TRANSPORTATION INC.

ENTERED
Office of Proceedings

JAN 25 2010

Part of
Public Record

COMMENTS OF THE BROTHERHOOD OF RAILROAD SIGNALMEN AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION/IBT

I. INTRODUCTION AND SUMMARY OF POSITION

The Brotherhood of Railroad Signalmen ("BRS"), the union that represents railroad signal workers nationally, and on all of the Class I rail carriers, including CSX Transportation ("CSX"), and the Brotherhood of Maintenance of Way Employees Division/IBT ("BMWED") the union that represents track, bridge and structures workers nationally, and on all of the Class I rail carriers, including CSXT (jointly referred to as "Unions"), submit these comments in response to the application filed by Massachusetts Coastal Railroad, LLC (Mass Coastal) and CSX Transportation ("CSXT") for STB approval of the conveyance of a so-called "operating easement" on certain CSXT lines in Massachusetts from CSXT to Mass Coastal. The easement has been described as a retained right for CSXT to serve shippers on the lines after they are sold to the Commonwealth of Massachusetts ("Commonwealth"). The Commonwealth does not seek approval of its part in the transaction in this Finance Docket. The Commonwealth seeks to effect the line acquisition without Board approval or exemption in the related Finance Docket No, 35312; the Commonwealth does not seek Board approval or exemption of Mass Coastal's acquisition of the right to serve shippers on the lines the Commonwealth would own.

The Unions submit that Mass Coastal's acquisition of the exclusive right and duty to serve shippers on the lines in question should not be approved as presented: as a conveyance of a

so-called "operating easement". There is no such transaction under the ICA; it is merely a device created to support the claim in Finance Docket 35312 that there would be no sale of rail lines from CSXT to the Commonwealth for which Board approval or exemption is required, due to CSXT's retention of the supposed "operating easement". In reality, the Mass Coastal transaction is effectively an acquisition of trackage or operating rights, or a lease, by Mass Coastal from the Commonwealth. While the Mass Coastal transaction could be approved as such a transaction, it should not be approved as a conveyance of an "operating easement" from CSXT to Mass Coastal.

II. FACTS

The Unions represent maintenance of way and signal employees of CSXT including those who work on the lines that are subject of this transaction; they also represent employees who work on the other lines that will be conveyed to the Commonwealth in the related transaction in Finance Docket 35312.

This transaction is one by which Mass Coastal would replace CSXT as provider of freight service to shippers on what are now CSXT's South Coast Lines in southeastern Massachusetts, in and around New Bedford and Fall River. Application at 5. Pursuant to agreements among CSXT, the Commonwealth and Mass Coastal, CSXT would sell the South Coast lines to the Commonwealth in FD 35312, but retain a so-called "operating easement" to continue to provide freight service on the lines. However, upon the sale of the lines to the State, CSXT would convey the operating easement on the South Coast Lines to Mass Coastal; that is the transaction that is the subject of this Finance Docket. *Id.* 3-5. Although the Commonwealth has not sought approval of its part in this transaction involving CSXT and Mass Coastal, the conveyance of the operating easement from CSXT to Mass Coastal was subject to the approval of the Commonwealth which

agreed to allow Mass Coastal to be the entity to provide freight service on the South Coast Lines.

Id. at 5; CSXT Response to BMWED/BRS Interrogatory No. 5 (BMWED/BRS Ex. A).

Additionally, the “operating easement” can only be transferred by Mass Coastal upon approval of the Commonwealth. Purchase and Sale Agreement §10.

The Commonwealth has said that it is acquiring the South Coast Lines in connection with a plan to initiate commuter rail operations on those lines. Application at; 5, 16 (emphasis added–“the Commonwealth contemplates a commuter operation”, “it is anticipated that MBTA will expand its commuter system to the South Coast Lines”). The Commonwealth would assume responsibility for maintenance of the lines and the signal systems whenever it actually begins commuter rail operations. Application at 5, 13, 16. But, upon acquisition of the lines, and for some years thereafter, the Commonwealth would not initiate such service and would not be responsible for maintenance of the lines and signal system. In responses to discovery requests served by the Unions, and in public documents, the Commonwealth has stated that it is still seeking financing for the improvement of the South Coast Lines, and does not plan to start commuter rail service until 2016. Commonwealth Response to BMWED/BRS Interrogatories Nos. 5, 11, 12 (BMWED/BRS Ex. B). Bay Colony Railroad would continue to interchange on the South Coast Lines, and Providence and Worcester has unexercised trackage rights on one of the lines. Application at 10; Mass Coastal Response to BMWED/BRS Interrogatory No. 8 (BMWED/BRS Ex. C). So, at least until 2016, and perhaps longer depending on financing and other variables, Mass Coastal will be the only entity providing service on the South Coast Lines, and it will be responsible for maintaining those lines and the signal system. Application at 16; Mass Coastal Response to BMWED/BRS Interrogatory No. 9 (BMWED/BRS Ex. C).

III. STATEMENT OF POSITION

The Unions respectfully submit that the Board cannot approve the CSXT-Mass Coastal transaction as a conveyance of an “operating easement” since there is no such transaction under the ICA. An “operating easement” is a fabricated concept that does not exist under the statute. The ICA identifies various types of conveyances of rail lines, track, operating rights and control of rail lines that cover numerous ways by which an entity might obtain the right or ability to operate on a line of railroad. But the term “operating easement” does not exist in the statute. Rather than being an actual transaction under the ICA, the retained “operating easement” is being used here to facilitate the sale of CSXT’s rail lines to the Commonwealth in F.D. 35312 without Board approval or exemption of approval of the sale under Section 10901. By seeking approval of the sale of the “operating easement”, CSXT and the Commonwealth are trying to avoid Board approval or exemption of the sale of the South Coast Lines to the Commonwealth and the need for approval or exemption of the arrangement whereby the Commonwealth would allow Mass Coastal to provide the freight service on the lines owned by the Commonwealth. But the Commonwealth, CSXT and Mass Coastal cannot dictate the Board’s jurisdiction by creating new terms for what are already defined transactions. The Board has jurisdiction of the Commonwealth–CSXT transaction because it involves the conveyance of lines of railroad that will continue to be used in interstate commerce. The Board also has jurisdiction over the Commonwealth-Mass Coastal arrangement. There is no basis for the Board to approve the Mass Coastal acquisition of CSXT’s so-called “operating easement” because that is not an ICA transaction. However, Mass Coastal’s acquisition of the right to provide freight service on the South Coast Lines is a type of transaction that requires approval or exemption from approval by the Board.

1. The Unions submit that in actuality, in Finance Docket No. 35312, the Commonwealth seeks to acquire active rail lines that will still be used for interstate rail transportation and, as such, the acquisition is subject to the jurisdiction of the Board and must be approved or exempted from approval by the Board under Section 10901. Then, Mass Coastal seeks the right to operate on the South Coast Lines to be acquired by the Commonwealth. Since the Commonwealth would own the lines, the transaction by which Mass Coastal would assume responsibility for serving shippers on the lines is effectively a lease, joint use, trackage rights or contract to operate transaction between the Commonwealth and Mass Coastal that must be approved or exempted by the Board, after the Board approves or exempts the Commonwealth's acquisition of the lines from CSXT. Comparison of the nature of the Mass Coastal transaction to the types of transactions governed by the ICA demonstrates that there is a transaction to be approved here, just not the one described by CSXT and Mass Coastal; there would be a transaction between an entity that would own and control a rail line, and entity that would operate on, maintain and provide service on that rail line--a lease, joint use, trackage rights or contract to operate transaction.

2. That the Mass Coastal transaction is effectively a lease, joint use, trackage rights or contract to operate transaction between the Commonwealth and Mass Coastal is also shown by the fact that the Commonwealth, as future owner of the lines, had a right to approve the transaction between CSXT and Mass Coastal, and has the right to approve a subsequent conveyance of the right to serve shippers on the South Coast Lines. The ability of the Commonwealth to approve or disapprove the entity to provide the freight service on the South Coast Lines constitutes control of the lines under the Act.

Control has always been broadly construed under the ICA. In *United States v. Marshall*

Transport, 322 U.S. 31 (1944), the Supreme Court rejected a narrow reading of control and said that former Section 5(2) and former Section 5(4) “embraced every type of control in fact”, and that it covers control “however such result is attained, whether directly or indirectly, by use of common directors, officers or stockholders...or in any manner whatsoever. §5(4)”. *Id.* at 38, ellipsis in original. In *Allegheny Corp. v. Breswick*, 353 U.S. 151, 163 (1957), the Court said that the determination of control depends on “the realities of the situation”, and that it had “rejected artificial tests for ‘control’ and left its determination in a particular case as a practica[l] concept to the agency charged with enforcement”. The Commonwealth’s control over the entity that would replace CSXT for provision of freight service on the South Coast Lines, and control over any replacement of Mass Coastal demonstrates that Mass Coastal’s acquisition of the right to serve shippers on the South Coast Lines is effectively one between the Commonwealth and Mass Coastal. That payments would be made from Mass Coastal to CSXT for the right to replace CSXT as freight service provider does not negate the Commonwealth’s role in this transaction; there are substantial transfers of funds, property and rights among the parties involved in both transactions (F.D. 35314 and F.D. 35312). Application at 4,8. Accordingly, that payments would be from Mass Coastal to CSXT in the acquisition of the right to provide freight service on the South Coast Lines does not mean that there would be no consideration, no compensation to the Commonwealth as a result of that transaction. Given the facts, this transaction simply cannot properly be described as one solely between CSXT and Mass Coastal.

3. Furthermore, it must be recognized that while the Commonwealth seeks to buy the South Coast Lines, the earliest time that it will have its own operations and responsibility for

maintenance of the line and signal system will be 2016.¹ Thus, immediately after the transaction, and for years afterward, only Mass Coastal will be operating-on and maintaining the South Coast Lines. In reality, the arrangement here is one of Mass Coastal leasing or acquiring operating or trackage rights from the Commonwealth. The plan is for CSXT to sell its lines to the Commonwealth; when that occurs, Mass Coastal has to acquire its operating rights by a transaction with the Commonwealth.

CSXT and Mass Coastal want to pretend that the Commonwealth has no role in their transaction, and they ask the Board to ignore the fact that the lines involved will be owned by the Commonwealth when Mass Coastal will be operating and maintaining the lines. By using the phrase "operating easement", CSXT and Mass Coastal seek to disguise the true nature of this transaction. But Mass Coastal and CSXT cannot change the fundamental nature of this transaction by linguistic sleight of hand, creating a new term for a transaction that is already covered by the ICA.²

¹ Extension of commuter rail service to the South Coast Lines is not a certainty, and definitely not something that will occur in the near term. The Application (at 5 and 16) only states that the Commonwealth "contemplate" or "anticipates" commuter rail service on the lines. And the Commonwealth's responses to BMWED/BRS interrogatories 5, 11, and 12 are that the Commonwealth is working on the financing, will apply for Federal funds and that at present it is assumed that service would start in 2016. So, for a minimum for 6 years, and perhaps longer, the only effect of this transaction would be that Mass Coastal would replace CSXT as provider of freight service on lines owned by the Commonwealth.

²If, however, the Board does not treat this transaction as a lease, trackage rights or contract to operate transaction between the Commonwealth and Mass Coastal, then it must treat the transaction as a lease or trackage rights transaction between CSXT and Mass Coastal where shippers on the line that were served by CSXT will be served by Mass Coastal rather than CSXT. If, as asserted by CSXT and the Commonwealth, there is no transaction between CSXT and the Commonwealth cognizable under the ICA, then this transaction is effectively a lease or trackage rights transaction between CSXT and Mass Coastal. Acceptance of the notion that there is no transaction between CSXT and the Commonwealth necessarily means that the transaction by which Mass Coastal would acquire CSXT's rights to serve the shippers on the South Coast lines is a lease or trackage rights arrangement between CSXT as owner of the line and Mass Coastal

4. The Unions respectfully submit that there is no legitimate basis for the parties here to characterize the nature of Mass Coastal's acquisition of operating rights on the South Coast lines as an acquisition of an "operating easement". The true reason for this bit of legerdemain is to support the assertion that there is no acquisition under the Board's jurisdiction in F.D. 35312. Using the fictional device of a retained "operating easement" supports the claim that the CSXT-Commonwealth transaction does not involve any conveyance subject to Board approval. The Board should not approve a fictitious transaction that has been structured as this one has, solely for the purpose of evasion of the Board's jurisdiction over the CSXT-Commonwealth line sale.

A well-established line of judicial and ICC/STB precedent holds that the Board can, and should ignore devices and sham arrangements utilized to avoid or invoke its jurisdiction; and that the Board should look to the true nature of a transaction, not to the form in which it is presented to the Board. In *County of Marin v. United States*, 356 U.S. 412 (1958), the Supreme Court vacated ICC approval of a transfer of operating authority from a motor carrier to its subsidiary in return for stock in the subsidiary. The effect of the transaction, indeed its apparent purpose, was to use ICC jurisdiction to defeat State agency jurisdiction. *Id.* at 415. The Supreme Court held that the Commission should have rejected the transaction presented because it was little more than a "paper transaction" between two commonly-owned corporations for the purpose of avoiding State regulation and was not an acquisition under the Act. *Id.* at 418 -419. In *Allegheny Corp. v. Breswick*, *supra*. 353 U.S. at 163, the Court said that the determination of control [and

since there would be no intervening transaction. The parties cannot make the Commonwealth disappear as an involved party and then make it reappear according to their own convenience. Either there is a sale of rail lines used in interstate commerce in which case the Board has jurisdiction over the sale; and the Mass Coastal transaction necessarily is a lease or operating rights arrangement between Mass Coastal and the owner of the lines, the Commonwealth; or there is no sale, in which case Mass Coastal is leasing the lines from CSXT.

thus Commission jurisdiction over certain entities] depends on “the realities of the situation” and that it had “rejected artificial tests for ‘control’ and left its determination in a particular case as a practical concept to the agency charged with enforcement”. The ICC and STB have also rejected or modified transactions when they were found to be “shams” or devices to attain other goals. *Sagamore National Corporation Acquisition and Operation Exemption - - Lines of Indiana Hi-Rail Corporation*, F.D. No. 32582 (served September 20, 1994, and October 28, 1994), involved a purported acquisition of a rail line, but the ICC held that no “transaction cognizable under the Interstate Commerce Act actually took place” because of a substantial interrelationship between the two parties. In *Hi-Tech Trans, LLC –Petition for Declaratory Order–Newark, NJ*, F.D. No. 34192(Sub-No. 1)(served November 20, 2003 and August 14, 2003), the Board rejected a company’s petition for a declaratory order that its operation of a truck-to-rail transloading facility was subject to STB jurisdiction, concluding that Hi-Tech was not a rail carrier, and that the purpose of the petition appeared to be to seek preemption of State and Local regulation of the facility. See also *Portland & Western R.R.–Trackage Rights Exemption– Burlington Northern R.R. Co.*, (F.D. No. 32766)(Served March 11, 1997), evidence that a lease was not bona fide would be considered to support a petition for revocation of an exemption; and *InterCarolinas Motor Bus.*, 28 MCC 665, 669 (1941), - - “We are not bound by the name which the parties applied to the arrangement which they entered into”. And in *Delaware and Hudson Ry. Co.—Springfield Terminal Ry.*, 4. ICC 2d 322(1988), the ICC concluded that a series of purported individual intra-corporate lease transactions were more akin to a merger or control transaction; that the series of transactions had been mis-characterized as leases and that the goal was actually to apply on all commonly owned carriers advantageous work rules applicable on the smallest affiliate in order to reduce labor costs. 4. ICC 2d at 327-


330.

BMWED and BRS submit that application of those principles to the instant case further demonstrates that the Board should not approve the CSXT/Mass Coastal application. Since there is no "operating easement" transaction under the ICA, and the apparent purpose for describing the arrangement for Mass Coastal to obtain the exclusive right and duty to serve shippers on the South Coast Lines as an "operating easement" is to support the improper attempt evade Board jurisdiction over the CSXT-Commonwealth transaction in F.D. 35312, the Board should not approve the application as presented.

CONCLUSION

While the Board could approve Mass Coastal's acquisition of operating or trackage rights on the South Coast Lines from the Commonwealth, or Mass Coastal's lease of those lines from the Commonwealth, the conveyance of an "operating easement" from CSXT is not a transaction that should be approved. The CSXT-Mass Coastal application for approval of the supposed "operating easement" transaction should therefore be denied, subject to possible resubmission for approval of a legitimate transaction between Mass Coastal and the Commonwealth.

Respectfully submitted,

/s/ 

Richard S. Edelman
O'Donnell, Schwartz & Anderson
1300 L Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 898-1707
(202)-682-9276
REdelman@odsalaw.com

Dated: January 25, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served copies of the foregoing Comments of the Brotherhood of Railroad Signalmen and Brotherhood of Maintenance of Way Employees Division/IBT, by First Class Mail, to the offices of the following:

John H. Broadley,
John H. Broadley & Associates, PC
1054 Thirty-First Street, N.W., Suite 200
Washington, DC 20007

Louis E. Gitomer,
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204

Michael S. Wolly
Zwerdling, Paul, Kahn, & Wolly, PC
1025 Connecticut Avenue NW Suite 712
Washington, DC 20036

James E. Howard
Attorney at Law
1 Thompson Sq., Suite 201
Charlestown, MA 02129

Date: January 25, 2010

A handwritten signature in black ink, appearing to read 'RSE', is written over a horizontal line.

Richard S. Edelman

**BMWED/BRS
EXHIBIT A**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35314

MASSACHUSETTS COASTAL RAILROAD, LLC
-ACQUISITION-
CSX TRANSPORTATION, INC.

RESPONSE OF CSX TRANSPORTATION, INC. TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY THE
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION/IBT AND
BROTHERHOOD OF RAILROAD SIGNALMEN

Peter J. Shudtz, Esq.
Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250

Counsel for CSX Transportation, Inc.

Dated: January 18, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35314

MASSACHUSETTS COASTAL RAILROAD, LLC
-ACQUISITION-
CSX TRANSPORTATION, INC.

RESPONSE OF CSX TRANSPORTATION, INC. TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY THE
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION/IBT AND
BROTHERHOOD OF RAILROAD SIGNALMEN

CSX Transportation, Inc. ("CSXT") responds to the Interrogatories and Requests for Production of Documents Propounded by the Brotherhood of Maintenance of Way Employees Division/IBT ("BMWE") and Brotherhood of Railroad Signalmen ("BRS"), served on January 8, 2010 (the "Discovery Request").

GENERAL RESPONSES

The following general responses are made with respect to all of the discovery requests.

1. CSXT has conducted a reasonable search for responsive documents and information to respond consistent with the stated objections.¹

2. Where objections have been raised to the scope of the request, CSXT is willing to discuss searching for and producing documents or information covered by a more limited request taking into account the stated objection.

¹ Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or

3. Production of information or documents does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any applicable objection.

GENERAL OBJECTIONS

The following general objections are made with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each discovery request.

1. CSXT objects to production of, and is not producing, documents or information subject to the attorney-client privilege, the work product doctrine, or administratively confidential documents or information.

2. CSXT objects to production of, and is not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. CSXT objects to production of, and is not producing, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board (the "Board"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. CSXT objects to the production of, and is not producing, information or documents that are as readily attainable by BMW or BRS from their own files.

the work product doctrine are not being produced.

5. CSXT objects to the production of, and is not producing, information or documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

6. CSXT objects to the production of, and is not producing, information or documents to the extent they are sought in a form not maintained by CSXT in the regular course of business and are not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which CSXT objects to performing.

7. CSXT objects to the Definitions and Instructions of BMW and BRS to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

8. CSXT objects to responding to Interrogatories directed to the Massachusetts Coastal Railroad, LLC ("Mass Coastal") where the information is within the knowledge of Mass Coastal.

INTERROGATORIES

INTERROGATORY NO. 1. When did Mass Coastal become part of the sale/trackage rights/"operating easement" arrangements that are the subject of Finance Dockets Nos. 35312 and 35314?

SPECIFIC OBJECTION. CSXT objects to Interrogatory No. 1 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from

CSXT. CSXT further objects to Interrogatory No. 1 on the ground that it is ambiguous in that the phrase "became part of" is subject to numerous interpretations. CSXT further objects to Interrogatory No. 1 on the ground that it is not relevant because Mass Coastal is not a party in Finance Docket No. 35312.

RESPONSE. Subject to the General Objections and the Specific Objections, CSXT responds that CSXT and Mass Coastal entered into discussions on or about July 15, 2009 when they entered a Confidentiality Agreement for the purpose of exchanging information and negotiating the terms of an agreement to sell the to be created CSXT permanent freight easement over the South Coast Lines to Mass Coastal.

INTERROGATORY NO. 2. Did the Commonwealth and/or CSXT consider, or negotiate with, any entity other than Mass Coastal concerning the sale of CSXT's "operating easement" on the current "South Coast Lines"?

SPECIFIC OBJECTION. CSXT objects to Interrogatory No. 2 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT. CSXT further objects to Interrogatory No. 2 on the ground that BMWE and BRS are seeking information from CSXT as to actions and thoughts of the Commonwealth and Mass Coastal, which are not within the knowledge of CSXT.

RESPONSE. Subject to the General Objections and the Specific Objections, CSXT responds that Mass Coastal was the only entity considered by CSXT and the only party that CSXT negotiated with to sell the permanent freight easement for the South Coast Lines.

INTERROGATORY NO. 3. What was Mass Coastal told about how long it would take for the Commonwealth to upgrade the South Coast Lines for commuter rail service?

RESPONSE. CSXT will not respond to Interrogatory No. 3, which is directed to Mass Coastal.

INTERROGATORY NO. 4. What was Mass Coastal told about how long it would take for the Commonwealth to begin commuter rail service on the South Coast Lines from the time the decision is made to extend commuter operations to the South Coast Lines to the time commuter service would begin?

RESPONSE. CSXT will not respond to Interrogatory No. 4, which is directed to Mass Coastal.

INTERROGATORY NO. 5. Was the Commonwealth required to approve the CSXT-Mass Coastal Agreement before it was entered?

a. If so, was Mass Coastal required [t]o provide any documents or information to the Commonwealth, and if so what was provided?

b. If so, were there any limitations or conditions attached to the Commonwealth's decision to approve the CSXT-Mass Coastal agreement?

SPECIFIC OBJECTION. CSXT objects to Interrogatory No. 5 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT. CSXT further objects to Interrogatory No. 5 on the ground that BMW and BRS are seeking an interpretation of documents that speak for themselves.

RESPONSE. Subject to the General Objections and the Specific Objections, CSXT responds that the Commonwealth was not required to approve the Purchase & Sale Agreement of Permanent Freight Easement (the "PSA") between CSXT and Mass Coastal before CSXT and Mass Coastal entered the PSA. The Commonwealth is required to approve Mass Coastal as the transferee of the permanent freight easement over the South Coast Lines pursuant to Sections 2.1, 2.2.1, 2.4, 2.4.1.1, 8.3.2, and 19.4 of the Definitive Agreement as amended by the First Amendment and the proposed First Closing South Coast Deed, Exhibit D, subsection 4. The

PSA provides that as of the date of the PSA, the PSA is subject to the rights of the Commonwealth over the South Coast Lines (section 2(b)) and that the South Coast Lines are owned by the Commonwealth (section 17).

a. CSXT will not respond to Interrogatory No. 5a, which is directed to Mass Coastal.

b. Subject to the General Objections and the Specific Objections and the preceding response to Interrogatory No. 5, CSXT responds that there are no such limitations or conditions, because the Commonwealth did not approve the terms of the PSA.

INTERROGATORY NO. 6. Can Mass Coastal sell the "operating easement" acquired from CSXT?

a. If so, are there any restrictions or limitations on Mass Coastal's ability to sell the "operating easement," and what are such restrictions or limitations?

b. If so, does CSXT have a prior right to repurchase, or does it have a right of first refusal to re-acquire, the "operating easement"?

SPECIFIC OBJECTION. CSXT objects to Interrogatory No. 6 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT. CSXT further objects to Interrogatory No. 6 on the ground that BMWE and BRS are seeking an interpretation of documents that speak for themselves.

RESPONSE. Subject to the General Objections and the Specific Objections, CSXT responds that Mass Coastal can sell the South Coast Lines' permanent freight easement to be acquired from CSXT.

With respect to Interrogatory No. 6a, subject to the General Objections and the Specific Objections, CSXT responds that restrictions or limitations on Mass Coastal's ability to sell the

permanent freight easement are provided in Section 10 of the PSA, and the proposed First Closing South Coast Deed, Exhibit D, and that Mass Coastal must comply with CSXT's rights under Section 20 of the PSA.

With respect to Interrogatory No. 6b, subject to the General Objections and the Specific Objections, CSXT responds that CSXT does have a prior right to repurchase or to reacquire, the South Coast Lines' permanent freight easement pursuant to the provisions of Section 20 of the PSA.

INTERROGATORY NO. 7. Has any operating or maintenance agreement for the South Coast Lines been entered between or among the Commonwealth, Mass Coastal and/or CSXT?

SPECIFIC OBJECTION. CSXT objects to Interrogatory No. 7 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, CSXT responds that under Section 7 of the PSA, as of the Commencement Date, as defined in the PSA, CSXT "shall have no further duties or obligations with relation to the repair, maintenance, existence and operation of the Line and all other improvements or fixtures now or hereafter located on the Line;" and under Section 5.4 of the Definitive Agreement as amended by the First Amendment, "As of [the First Closing (as defined in the Definitive Agreement)], [CSXT] will no longer have any maintenance or dispatching obligations with respect to the South Coast Assets or BPY Assets."

CSXT will not respond to that portion of Interrogatory No. 7, which is directed to Mass

Coastal.

INTERROGATORY NO. 8. Prior to the commencement of commuter rail service, will there be any rail operations on the South Coast Lines other than operations by Mass Coastal?

SPECIFIC OBJECTION. CSXT objects to Interrogatory No. 8 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, CSXT responds that as of the Commencement Date, which CSXT believes will be prior to the commencement of commuter operations on the South Coast Lines, the Bay Colony Railroad Corporation will continue to have its existing rights to effect interchange on the South Coast Lines. In addition, the Providence and Worcester Railroad Company will continue to be authorized to operate under trackage rights, which it currently does not use.

INTERROGATORY NO. 9. What is Mass Coastal paying CSXT for conveyance at the "operating easement" on the South Coast Lines?

- a. initially, and within the first year of conveyance of the "operating easement".
- b. on an annual basis in the years after the first year after the conveyance of the "operating easement".

SPECIFIC OBJECTION. CSXT objects to Interrogatory No. 9 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, CSXT responds that

Section 4 and Exhibit F of the CONFIDENTIAL version of the PSA provide the information requested in Interrogatory No. 9 and subparts a and b, and that the CONFIDENTIAL version of the PSA will be produced.

INTERROGATORY NO. 10. Is Mass Coastal planning any change to the South Coast Lines' track and/or signal system?

RESPONSE. CSXT will not respond to Interrogatory No. 10, which is directed to Mass Coastal.

INTERROGATORY NO. 11. Who will be responsible for performance of signal and maintenance of way work on the South Coast Lines?

- a. before any commencement of commuter operations
- b. during any upgrade of the lines to accommodate commuter rail operations
- c. after commencement of commuter rail operations.

SPECIFIC OBJECTION. CSXT objects to Interrogatory No. 11 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, CSXT responds that pursuant to Section 5.4 of the Definitive Agreement as amended by the First Amendment, "As of [the First Closing], [CSXT] will no longer have any maintenance or dispatching obligations with respect to the South Coast Assets or BPY Assets;" and pursuant to Section 7 of the PSA, after the Commencement Date, CSXT "shall have no further duties or obligations with relation to the repair, maintenance, existence and operation of the Line and all other improvements or fixtures now or hereafter located on the Line."

REQUESTS FOR PRODUCTION OF DOCUMENTS

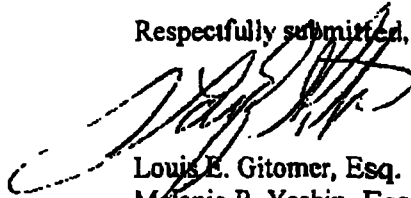
PRODUCTION REQUEST NO. 1. Any documents identified in response to interrogatories nos. 5 and 7.

RESPONSE. Subject to the General Objections and the Specific Objections in the relevant Interrogatories, CSXT will produce documents responsive to Production Request No. 1.

PRODUCTION REQUEST NO. 2. Any documents referred to in answering these interrogatories.

RESPONSE. Subject to the General Objections and the Specific Objections in the relevant Interrogatories, CSXT will produce documents responsive to Production Request No. 2. CSXT is producing the CONFIDENTIAL PSA, the Definitive Agreement, the First Amendment to the Definitive Agreement, and the First Closing South Coast Deed.

Respectfully submitted,



Peter J. Shudtz, Esq.
Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250

Counsel for CSX Transportation, Inc.

Dated: January 18, 2010

VERIFICATION OF CSX TRANSPORTATION, INC.
(28 U.S.C. 1746)
(49 CFR 1104.5)

I, Peter J. Shudtz, verify under penalty of perjury that the foregoing substantive answers to interrogatories are true and correct. Further, I certify that I am qualified and authorized to execute this document.

Executed on January 15, 2010

Peter J. Shudtz
Vice President
CSX Transportation, Inc.

With respect to objections and procedural matters:



Attorney for CSX Transportation, Inc.

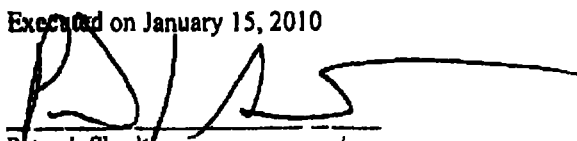
Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou_Gitomer@verizon.net

Dated: January 18, 2010

VERIFICATION OF CSX TRANSPORTATION, INC.
(28 U.S.C. 1746)
(49 CFR 1104.5)

I, Peter J. Shudtz, verify under penalty of perjury that the foregoing substantive answers to interrogatories are true and correct. Further, I certify that I am qualified and authorized to execute this document.

Executed on January 15, 2010



Peter J. Shudtz
Vice President
CSX Transportation, Inc.

With respect to objections and procedural matters:

Attorney for CSX Transportation, Inc.

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou_Gitomer@verizon.net

Dated: January 18, 2010

BMWED/BRS
EXHIBIT B

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35314

MASSACHUSETTS COASTAL RAILROAD, LLC
- ACQUISITION -
CSX TRANSPORTATION, INC.

RESPONSE OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN

Keith G. O'Brien
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Facsimile: (202) 663-7849

Attorneys for Massachusetts Department
of Transportation

Dated: January 18, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35314

MASSACHUSETTS COASTAL RAILROAD, LLC
– ACQUISITION –
CSX TRANSPORTATION, INC.

RESPONSE OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN

The Massachusetts Department of Transportation (“MASSDOT”) responds to the Interrogatories and Requests for Production of Documents Propounded by the Brotherhood of Maintenance of Way Employees Division/IBT (“BMW”) and Brotherhood of Railroad Signalmen (“BRS”), served on January 8, 2010 (the “Discovery Request”).

GENERAL RESPONSES

The following general responses are made with respect to all of the discovery requests.

1. MASSDOT has conducted a reasonable search for responsive documents and information to respond consistent with the stated objections.¹
2. Where objections have been raised to the scope of the request, MASSDOT is willing to discuss searching for and producing documents or information covered by a more limited request taking into account the stated objection.

¹ Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or

3. Production of information or documents does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any applicable objection.

GENERAL OBJECTIONS

The following general objections are made with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each discovery request.

1. MASSDOT objects to production of, and is not producing, documents or information subject to the attorney-client privilege, the work product doctrine, or administratively confidential documents or information.

2. MASSDOT objects to production of, and is not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. MASSDOT objects to production of, and is not producing, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. MASSDOT objects to the production of, and is not producing, information or documents that are as readily attainable by BMW or BRS from their own files.

the work product doctrine are not being produced.

5. MASSDOT objects to the production of, and is not producing, information or documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

6. MASSDOT objects to the production of, and is not producing, information or documents to the extent they are sought in a form not maintained by MASSDOT in the regular course of business and are not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which MASSDOT objects to performing.

7. MASSDOT objects to the Definitions and Instructions of BMWE and BRS to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

8. MASSDOT objects to the Discovery Request because MASSDOT is not a party to Finance Docket No. 35314.

INTERROGATORIES

INTERROGATORY NO. 1. When did Mass Coastal become part of the sale/trackage rights/ "operating easement" arrangements that are the subject of Finance Dockets Nos. 35312 and 35314?

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 1 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from

CSXT. MASSDOT further objects to Interrogatory No. 1 on the ground that it is ambiguous in that the phrase "became part of" is subject to numerous interpretations. MASSDOT further objects to Interrogatory No. 1 on the ground that it is not relevant in that Mass Coastal is not a party in Finance Docket No. 35312.

RESPONSE. Subject to the General Objections and the Specific Objections, MASSDOT responds that MASSDOT was not aware of the discussions until CSXT authorized Mass Coastal, to contact MASSDOT to inform it of the CSXT-Mass Coastal negotiations, before it became publicly known.

INTERROGATORY NO. 2. Did the Commonwealth and/or CSXT consider, or negotiate with, any entity other than Mass Coastal concerning the sale of CSXT's "operating easement" on the current "South Coast Lines"?

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 2 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT. MASSDOT further objects to Interrogatory No. 2 on the ground that BMW and BRS are seeking information from MASSDOT as to actions and thoughts of CSXT, which are not within the knowledge of MASSDOT.

RESPONSE. Subject to the General Objections and the Specific Objections, MASSDOT responds that MASSDOT deferred to CSXT in negotiating the entity to acquire the CSXT permanent Freight Easement on the South Coast Lines. MASSDOT was not aware of the discussions until CSXT authorized Mass Coastal, to contact MASSDOT to inform it of the CSXT-Mass Coastal negotiations, before it became publicly known.

INTERROGATORY NO. 3. What was Mass Coastal told about how long it would take

for the Commonwealth to upgrade the South Coast Lines for commuter rail service?

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 3 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objections, MASSDOT responds that documents responsive to this interrogatory are available at <http://www.southcoastrail.com/refmaterials.asp?area=refm>.

INTERROGATORY NO. 4. What was Mass Coastal told about how long it would take for the Commonwealth to begin commuter rail service on the South Coast Lines from the time the decision is made to extend commuter operations to the South Coast Lines to the time commuter service would begin?

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 4 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objections, MASSDOT responds that documents responsive to this interrogatory are available at <http://www.southcoastrail.com/refmaterials.asp?area=refm>.

INTERROGATORY NO. 5. Is extension of commuter rail service to the South Coast Lines a certainty?

a. If not what conditions would affect whether extension of commuter rail service actually occurs.

b. If commuter rail service is not extended to the South Coast Lines, will that have any effect on the arrangements among the Commonwealth, CSXT and Mass Coastal.

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 5 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT. MASSDOT further objects to Interrogatory No. 5 on the ground that the term "certainty" is ambiguous, particularly when there is no definitive time period referenced. MASSDOT further objects to Interrogatory No. 5 on the ground that it requests MASSDOT to speculate about the future where there are an unknown number of unknown events that might occur.

RESPONSE. Subject to the General Objections and the Specific Objections, MASSDOT responds that it expects to commence construction for the extension of commuter rail service to the South Coast Lines in 2012 and for service to commence in 2016.

INTERROGATORY NO. 6. Was the Commonwealth required to approve the CSXT-Mass Coastal Agreement before it was entered?

a. If so, was Mass Coastal required [t]o provide any documents or information to the Commonwealth, and if so what was provided?

b. If so, were there any limitations or conditions attached to the Commonwealth's decision to approve the CSXT-Mass Coastal agreement?

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 6 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT. MASSDOT further objects to Interrogatory No. 6 on the ground that BMW and BRS are seeking an interpretation of documents that speak for themselves.

RESPONSE. Subject to the General Objections and the Specific Objections, MASSDOT responds that the Commonwealth was not required to approve the Purchase & Sale Agreement of

Permanent Freight Easement (the "PSA") between CSXT and Mass Coastal before CSXT and Mass Coastal entered the PSA.

a. Subject to the General Objections and the Specific Objections and the preceding response to Interrogatory No. 6, MASSDOT responds that Mass Coastal was not required to provide any documents or information to the Commonwealth, because the Commonwealth did not approve the terms of the PSA.

b. Subject to the General Objections and the Specific Objections and the preceding response to Interrogatory No. 6, MASSDOT responds that there are no such limitations or conditions, because the Commonwealth did not approve the terms of the PSA.

INTERROGATORY NO. 7. Can Mass Coastal sell the "operating easement" acquired from CSXT?

a. If so, are there any restrictions or limitations on Mass Coastal's ability to sell the "operating easement," and what are such restrictions or limitations?

b. If so, does CSXT have a prior right to repurchase, or does it have a right of first refusal to re-acquire, the "operating easement"?

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 7 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT. MASSDOT further objects to Interrogatory No. 7 on the ground that BMW and BRS are seeking an interpretation of documents that speak for themselves.

RESPONSE. Subject to the General Objections and the Specific Objections, MASSDOT responds that Mass Coastal can sell the South Coast Lines' permanent freight easement to be acquired from CSXT and that the PSA speaks for itself.

With respect to Interrogatory No. 7a, subject to the General Objections and the Specific Objections, MASSDOT responds that other than the provisions in the PSA, restrictions or limitations on Mass Coastal's ability to sell the permanent freight easement are provided in the proposed First Closing South Coast Deed, Exhibit D.

With respect to Interrogatory No. 7b, subject to the General Objections and the Specific Objections, MASSDOT responds that CSXT's prior right to repurchase or to reacquire the South Coast Lines' permanent freight easement is pursuant to the provisions of the PSA, which speaks for itself.

INTERROGATORY NO. 8. Has any operating or maintenance agreement for the South Coast Lines been entered between or among the Commonwealth, Mass Coastal and/or CSXT?

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 8 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, MASSDOT responds that under Section 5.4 of the Definitive Agreement as amended by the First Amendment, "As of [the First Closing (as defined in the Definitive Agreement)], [CSXT] will no longer have any maintenance or dispatching obligations with respect to the South Coast Assets or BPY Assets." MASSDOT further responds that there is no agreement between MASSDOT and Mass Coastal, but that Mass Coastal and MBTA have entered into a Letter of Intent regarding the nature and contents of such an agreement.

INTERROGATORY NO. 9. Prior to the commencement of commuter rail service, will there be any rail operations on the South Coast Lines other than operations by Mass Coastal?

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 9 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, MASSDOT responds that as of the Commencement Date, which, upon information and belief, MASSDOT believes will be prior to the commencement of commuter operations on the South Coast Lines, MASSDOT believes that the Bay Colony Railroad Corporation will continue to have its existing rights to effect interchange on the South Coast Lines. In addition, upon information and belief, MASSDOT responds that the Providence and Worcester Railroad Company will continue to be authorized to operate under trackage rights, which it currently does not use.

INTERROGATORY NO. 10. Who will be responsible for performance of signal and maintenance of way work on the South Coast Lines?

- a. before any commencement of commuter rail operations.
- b. during any upgrade of the lines to accommodate commuter rail operations.
- c. after commencement of commuter rail operations.

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 10 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, MASSDOT responds that MASSDOT will produce the Letter of Intent between MASSDOT And Mass

Coastal, which is responsive to Interrogatory No. 10 and subparts a, b, and c.

INTERROGATORY NO. 11. Where does the Commonwealth intend to seek financing to improve the South Coast Lines for commuter rail operations

- a. will financing be sought from the federal government.
- b. if financing will be sought from the federal government explain the process to be used and how long the Commonwealth anticipated the project taking.

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 11 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, MASSDOT responds that a project finance plan is under development.

With respect to Interrogatory No. 11a, and subject to the General Objections and the Specific Objection, MASSDOT responds that it has or will seek funding from a variety of sources including Federal sources such as ARRA TIGER Discretionary Grant funding and High-Speed Intercity Passenger Rail funds.

With respect to Interrogatory No. 11b, and subject to the General Objections and the Specific Objection, MASSDOT responds that, as explained above, a project finance plan is under development.

INTERROGATORY NO. 12. Will the Commonwealth be using any funds from federal sources for the purchase of any of CSXT's lines

- a. if so, identify the intended funding source.
- b. if so, identify any documents submitted to the federal government to obtain such funding.

SPECIFIC OBJECTION. MASSDOT objects to Interrogatory No. 12 on the ground that it is not relevant to the criteria to be considered by the Board in deciding whether or not to grant the application for Mass Coastal to acquire the South Coast Lines' permanent freight easement from CSXT.

RESPONSE. Subject to the General Objections and the Specific Objection, MASSDOT responds that a project finance plan is under development and that it does not presently intend to seek financing from Federal sources for the purchase of assets identified in the Definitive Agreement.

With respect to Interrogatory No. 12a, and subject to the General Objections and the Specific Objection, MASSDOT responds that it does not presently intend to seek financing from Federal sources for the purchase of assets identified in the Definitive Agreement.

With respect to Interrogatory No. 12b, and subject to the General Objections and the Specific Objection, MASSDOT responds that the interrogatory is irrelevant because MASSDOT does not presently intend to seek financing from Federal sources for the purchase of assets identified in the Definitive Agreement.

REQUESTS FOR PRODUCTION OF DOCUMENTS

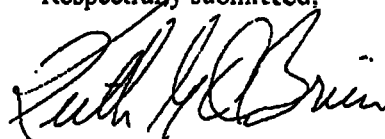
PRODUCTION REQUEST NO. 1. Any documents identified in response to interrogatories nos. 6, 8 and 12.

RESPONSE. Subject to the General Objections and the Specific Objections in the relevant Interrogatories, MASSDOT will produce documents responsive to Production Request No. 1.

PRODUCTION REQUEST NO. 2. Any documents referred to in answering these interrogatories.

RESPONSE. Subject to the General Objections and the Specific Objections in the relevant Interrogatories, MASSDOT will produce documents responsive to Production Request No. 2. MASSDOT is producing the First Amendment to the Definitive Agreement and the Letter of Intent between MBTA and Mass Coastal. In addition, please review the project web site at <http://www.southcoastrail.com/refmaterials.asp?area=refm>.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ruth H. Quinn". The signature is fluid and cursive, with the first name "Ruth" being more prominent.

Counsel for The Massachusetts
Department of Transportation

Dated: January 18, 2010

**BMWED/BRS
EXHIBIT C**

**BEFORE
THE SURFACE TRANSPORTATION BOARD
Washington, D.C.**

_____)
Massachusetts Coastal Railroad LLC—Acquisition--)
CSX Transportation, Inc.)
_____)

Finance Docket No. 35314

**ANSWERS OF MASSACHUSETTS COASTAL RAILROAD LLC
TO INTERROGATORIES OF BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES DIVISION/IBT AND BROTHERHOOD OF RAILROAD
SIGNALMEN**

Massachusetts Coastal Railroad LLC ("Mass Coastal") hereby responds to the Interrogatories and Document Request propounded by the Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of Railroad Signalmen (the "Unions").

GENERAL OBJECTIONS TO INTERROGATORIES AND DOCUMENT REQUEST

The General Objections apply to each interrogatory and document request.

1. Publicly Available Documents and Information Mass Coastal objects to the production of documents or information that is publicly available, including documents that have been filed with the Surface Transportation Board ("Board") and are available to the general public.
2. Documents and Information under Seal in this Proceeding Mass Coastal objects to the production of documents or information that had been filed with the Surface Transportation Board under seal and is available to the Unions upon compliance with the terms of a protective order entered by the Board in this proceeding.
3. Privileged Documents and Information Mass Coastal objects to the production of any documents or information that is subject to the attorney client or any other applicable

privilege or is protected under the attorney work-product doctrine. Mass Coastal's review has disclosed no such documents or information called for by these interrogatories and document request.

4. Relevance Mass Coastal objects to the production of documents or information that is not relevant to the issues before the Board in this proceeding. Notwithstanding this objection, and without waiving its rights, Mass Coastal is not withholding either requested documents or information on grounds of relevance.

RESPONSES TO INTERROGATORIES

Subject to the foregoing General Objections and any Specific Objections contained in answers below, Mass Coastal responds to the Unions' interrogatories as follows:

1. When did Mass Coastal become part of the sale/trackage rights/ "operating easement" arrangements that are the subject of Finance Docket Nos. 35312 and 35314.

Answer: Mass Coastal is uncertain what the Unions mean by *become part of the sale/trackage rights/ "operating easement" arrangements*. CSXT requested Mass Coastal to submit a proposal to offer to purchase the freight easement on July 14, 2009. Mass Coastal submitted a proposal on September 30, 2009. The Purchase and Sale Agreement has been entered into as of May 14, 2010.

2. Did the Commonwealth and/or CSXT consider, or negotiate with, any entity other than Mass Coastal concerning the sale of CSXT's "operating easement" on the current "South Coast Lines"?

Answer: Mass Coastal has no definite knowledge regarding this subject.

3. What was Mass Coastal told about how long it would take for the Commonwealth to upgrade the South Coast Lines for commuter rail service?

Answer: Mass Coastal was told that the current plan calls for commuter rail service to commence by 2016.

4. What was Mass Coastal told about how long it would take for the Commonwealth to begin commuter rail service on the South Coast Lines from the time the decision is made to extend the commuter operations to the South Coast Lines to the time commuter service would begin?

Answer: Mass Coastal was not given information on this issue.

5. Was the Commonwealth required to approve the CSXT-Mass Coastal Agreement before it was entered?

Answer: Not to Mass Coastal's knowledge. Mass Coastal believes that under the terms of agreements between CSXT and the Commonwealth, the Commonwealth has approved CSXT's transfer of the Freight Easement to Mass Coastal.

a. If so, was Mass Coastal required to provide any documents or information to the Commonwealth and if so what was provided.

Answer: Not applicable with respect to approval of the CSXT-Mass Coastal Agreement. Mass Coastal was not required to provide any documents or information to the Commonwealth in connection with the Commonwealth's approval of CSXT's transfer of the Freight Easement to Mass Coastal.

b. If so, were there any limitations or conditions attached to the Commonwealth's decision to approve the CSXT-Mass Coastal agreement.

Answer: Not applicable. Mass Coastal is not aware of any conditions on the Commonwealth's approval of CSXT's transfer of the Freight Easement to Mass Coastal.

6. Can Mass Coastal sell the "operating easement" acquired from CSXT?

Answer: Mass Coastal can sell the Freight Easement it is acquiring from CSXT.

a. If so, are there any restrictions or limitations on Mass Coastal's ability to sell the "operating easement," and what are such restrictions or limitations.

Answer: The restrictions and limitations are set forth in the Release Deed and the Exhibits thereto filed as Exhibits to the Motion to Dismiss filed by the Commonwealth in Finance Docket No. 35312. The Unions are respectfully referred to that publicly available document for an answer to this question. The terms of the Purchase and Sale Agreement also specifies that the terms of the Release Deed apply to a sale of the Freight Easement by Mass Coastal.

b. If so, does CSXT have a prior right to re-purchase, or does it have a right of first refusal to re-acquire, the "operating easement"?

Answer: CSXT has certain rights relating to repurchase/first refusal that are set forth in Section 20 of the Purchase and Sale Agreement. The Purchase and Sale Agreement was filed with the Application.

7. Has any operating and maintenance agreement for the South Coast Lines been entered into between or among the Commonwealth, Mass Coastal and/or CSXT?

Answer: No. Mass Coastal and the Commonwealth have entered into a Letter of Intent regarding the nature and contents of such an agreement.

8. Prior to the commencement of commuter rail service, will there be any rail operations on the South Coast Lines other than operations by Mass Coastal.

Answer: Bay Colony Railroad Corporation will continue to effect interchange on the South Coast Lines. Providence & Worcester has unexercised trackage rights to and over the Fall River Line.

9. What is Mass Coastal paying CSXT for conveyance at (*sic*) the "operating easement" on the South Coast Lines?

Answer: The terms of the sale of the Freight Easement are set forth in the Purchase and Sale Agreement. The financial terms of the sale are contained in the unredacted Purchase and Sale Agreement filed under seal and subject to the protective order entered by the Board in this proceeding. Counsel for the Unions can obtain a copy of the unredacted Purchase and Sale Agreement by executing the acknowledgement required by the protective order.

(a) initially, and within the first year of conveyance of the "operating easement".

Answer: See 9 above.

(b) on an annual basis in the years after the first year after the conveyance of the "operating easement."

Answer: See 9 above.

10. Is Mass Coastal planning any change to the South Coast Lines track and/or signal system?

Answer: No. Mass Coastal plans to maintain the South Coast Lines in their current condition.

11. Who will be responsible for performance of signal and maintenance of way work on the South Coast Lines?

- (a) before any commencement of commuter rail operations
- (b) during any upgrade of the lines to accommodate commuter rail operations
- (c) after commencement of commuter rail operations

Answer: Before commencement of upgrade of the lines to accommodate commuter rail operations, Mass Coastal will be responsible for performance of signal and maintenance of way work. After the commencement of upgrade and after commencement of commuter rail operations, the Commonwealth or one of its agencies or authorities will be responsible for signal and maintenance of way work.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

Subject to the General Objections and any Specific Objections below, Mass Coastal responds to the Unions' Document Request as follows:

1. Any documents identified in response to interrogatories nos. 5 and 7.

Response: Mass Coastal identified no documents in response to interrogatory no. 5.

Response: The Letter of Intent identified in response to interrogatory no. 7 has been filed as an exhibit in support of the Commonwealth's motion to dismiss the Notice of Exemption filed in Finance Docket No. 35312. That exhibit is publicly available.

2. Any documents referred to in answering these interrogatories.

Response: The documents Mass Coastal has referred in answering these interrogatories consist of the following:

- A. The Purchase and Sale Agreement
- B. The Commonwealth's Motion to Dismiss and attached Exhibits filed in Finance Docket No. 35312
- C. The Definitive Agreement and the First Amendment thereto (including exhibits) which is the subject of the Commonwealth's Notice of Exemption in Finance Docket 35312

Document A (the Purchase and Sale Agreement) is available to the Unions in its unredacted form in their capacity as parties to this proceeding upon compliance with the terms of the protective order. Documents B and C are publicly available

- D. Dan Wahle Day-Timer note of telephone conversation with Bobbie League and Dave Geraci of CSXT on July 14, 2009

Mass Coastal objects to the production of these notes on the grounds that they are not relevant to the issue before the Board in this proceeding. The issue before the

Board is specified in 49 U.S.C. 11124(d). Notwithstanding this objection, Mass Coastal will produce the Day-Timer note of the conversation related to CSXT's solicitation of a proposal from Mass Coastal. Mass Coastal has redacted notes of unrelated matters on the same page.

VERIFICATION OF MASS COASTAL
(28 U.S.C. 1746)
(49 CFR 1104.5)

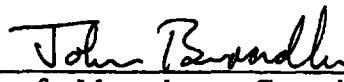
I, Daniel J. Wahle, verify under penalty of perjury that the foregoing substantive answers to interrogatories are true and correct. Further, I certify that I am qualified and authorized to execute this document.

Executed on January 14, 2009



Daniel J. Wahle
Vice President-Marketing
Massachusetts Coastal Railroad LLC

With respect to objections and procedural matters:



Attorney for Massachusetts Coastal Railroad LLC

John Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 301-942-8280
E-mail jbroadley@alum.mit.edu

Dated: January 18, 2010